

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CALVIN EALEY

PLAINTIFF

v.

CIVIL ACTION NO. 3:20-CV-124-KHJ-JCG

ANDREW SAUL, Commissioner of
Social Security

DEFENDANT

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is the Report and Recommendation of United States Magistrate Judge John C. Gargiulo. [16]. That Report recommends that the Court grant Plaintiff Calvin Ealey's Motion for Summary Judgment [9], deny Defendant Commissioner Andrew Saul's Motion to Affirm [13], and remand this case to the Social Security Administration. Written objections to the Report were due by May 21, 2021, and Judge Gargiulo notified the parties that failure to file written objections to the findings and recommendations by that date would bar further appeal in accordance with 28 U.S.C. § 636. [16] at 11. No party filed written objections by this deadline.

When no party has objected to a magistrate judge's report and recommendation, the Court need not review it de novo. 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court applies the "clearly erroneous, abuse of discretion and

contrary to law” standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Ealey applied for Title II disability insurance benefits, alleging disability beginning on February 17, 2017. [16] at 2. After his request was denied, Ealey requested a hearing before an administrative law judge (“ALJ”). *Id.* The ALJ heard his case, which included testimony from Ealey and a vocational expert. *Id.* The ALJ denied his claims on September 30, 2019. *Id.* Ealey appealed to this Court, arguing the ALJ erred in (1) failing to properly consider the medical opinion evidence from Veteran’s Administration psychologist Dr. Lashun A. Young; (2) failing to properly consider the effect of Plaintiff’s mental limitations when determining his ability to perform work-related activities; and (3) refusing to consider the treating nurse practitioner’s opinions. *Id.* at 5-6. The Magistrate Judge agreed with the first assignment of error and, as such, found the second two issues moot. *Id.* at 6.

This conclusion stems from the requirement found in 20 C.F.R. § 404.1520c, which requires the Commissioner to apply a five-factor test when considering a medical opinion. *See id.* § 404.1520c(c) (listing supportability, consistency, relationship with claimant, specialization, and other factors). As the Report acknowledges, “the regulations require an ALJ to ‘explain how [he or she] considered the supportability and consistency factors for a medical source’s medical opinions or prior administrative medical findings in [the claimant’s determination or decision.]’ 20 C.F.R. § 404.1520c(b)(2).” [16] at 7. Because the ALJ did not mention

Dr. Young's report or analyze this medical opinion using the required five-factor test, the Report concludes, the Court should remand this case.

Neither the Commissioner nor Ealey objected to the Report and Recommendation, and this Court does not find the Magistrate Judge's conclusions are "clearly erroneous, abuse of discretion, or contrary to law." *Wilson*, 864 F.2d at 1221. The Court therefore finds the Report and Recommendation should be adopted as the opinion of this Court, and this case should be remanded to the Social Security Administration.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Report and Recommendation [16] of United States Magistrate Judge John C. Gargiulo, entered in this cause should be, and the same is, adopted as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that Plaintiff Calvin Ealey's Motion for Summary Judgment [9] is GRANTED, Defendant Commissioner Andrew Saul's Motion to Affirm [13] is DENIED, and this case is REMANDED to the Social Security Administration.

SO ORDERED, this the 1st day of June, 2021.

s/ *Kristi H. Johnson*
UNITED STATES DISTRICT JUDGE